STATE OF MICHIGAN

COURT OF APPEALS

VIRGINIA MARY KOZLOWSKI, f/k/a VIRGINIA MARY BUNTING, Plaintiff-Appellee,	UNPUBLISHED December 28, 2006
V	No. 260869 Washtenaw Circuit Court
EDWIN HAROLD BUNTING, Defendant-Appellant.	LC No. 00-02853-DO

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant Edwin Harold Bunting (Bunting) appeals as of right from the trial court's "Order Conforming Consent Judgment of Divorce to Court of Appeals Opinion." We affirm.

I.

After 29 years of marriage, plaintiff Virginia Mary Kozlowski (Kozlowski) filed for divorce in December 2000. The marital estate is large and the proceedings have been contentious. A settlement agreement was placed on the record on March 6, 2002. Kozlowski agreed to accept a cash payment, in lieu of real property, in the amount of approximately $957,000. On March 14, 2002, the trial court entered a consent judgment of divorce, which adopted the reconciliation of the special master and awarded Kozlowski $187,830.16 deemed forfeited by Bunting. Bunting then objected to several consent judgment provisions, but the trial court rejected the objections. Bunting filed a prior appeal to this Court, which affirmed in part, reversed in part, and remanded for modification of the consent judgment to conform to the settlement agreement placed on the record. *Bunting v Bunting*, unpublished opinion of the Court of Appeals, issued July 27, 2004 (Docket No. 246087). In *Bunting*, this Court agreed that the trial court improperly entered a consent judgment that did not accurately reflect the parties' agreement on the record. Specifically, this Court held:

> [T]he consent judgment improperly restricted defendant's ability to transfer or encumber the Kelly Lake and Townline Lake properties, *improperly gave plaintiff a lien in all property awarded defendant*, and permitted plaintiff to convey defendant's interest after all terms of the consent judgment had been satisfied while requiring defendant to immediately convey plaintiff's interest. There was clearly disagreement with respect to the lien provisions, and plaintiff

should not have been permitted to unilaterally add the lien provision to the consent judgment. [Emphasis added.]

On remand, Kozlowski filed a motion to conform consent judgment of divorce to *Bunting*, submitting a proposed order. Bunting challenged Kozlowski's proposed order on the ground that it did not conform to *Bunting* (arguing that plaintiff was attempting to reassert liens rejected in *Bunting*). The trial court rejected Bunting's arguments and entered Kozlowski's proposed order, from which Bunting now appeals.

II.

Generally, this Court reviews a trial court's dispositional ruling in a divorce case to determine if it was fair and equitable in light of the facts presented. *Quade v Quade*, 238 Mich App 222, 224; 604 NW2d 778 (1999). Such a dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the property division was inequitable. *Id*. A property settlement agreement is a contract, and a judgment entered pursuant to the parties' agreement is treated as a contract. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Interpretation of ambiguous contracts is a question of law. *Id*.

III.

A.

Bunting first argues that under the law of the case doctrine, the trial court erred in not striking the lien provision imposed against the Kelly Lake and Townline Lake properties, as well as the properties on Burbank and Columbia streets. Bunting contends that *Bunting* held that Kozlowski is not entitled to liens on any of his properties. We disagree.

Under the law of the case doctrine, a trial court must follow prior appellate decisions in the same case. *In re Cummin Estate*, 267 Mich App 700, 707; 706 NW2d 34 (2005). A question of law, once decided by an appellate court, will not be decided differently on remand or in a subsequent appeal in the same case. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). "The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Id*.

With regard to a trial court's authority on remand, this Court recently stated:

> The power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court. When an appellate court remands a case without instructions, a lower court has the same power as if it made the ruling itself. However, when an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order. It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court. [*K & K Constr, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544-545;705 NW2d 365 (2005) [internal citations and quotation marks omitted.]

The March 6, 2002, transcript of the hearing at which the settlement agreement was placed on the record reflects that the matter of liens had not been finalized and remained subject to debate. However, contrary to Bunting's argument, *Bunting* did not preclude all liens or future liens, only those unilaterally added to the consent judgment. Thus, the trial court was only precluded from including unilateral lien provisions.

Moreover, *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993), held:

> When a court provides a lien on marital property, it impliedly grants money to one of the parties; a lien is a security interest for money owed by one party to the other. A court possesses inherent authority to enforce its own directives. A divorce case is equitable in nature, and a court of equity molds its relief according to the character of the case; once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy. In addition, MCL 600.611 . . . provides circuit courts with jurisdiction and power to make any order proper to fully effectuate the circuit courts' jurisdiction and judgments. [Citations omitted]

The record demonstrates that Bunting: willfully allowed a Rolls Royce to lose value by leaving it exposed to the elements; failed to timely submit documents and records in the bankruptcy proceedings; repeatedly failed to accurately and fully disclose income and assets; and repeatedly retained new counsel as a delaying tactic. The trial court properly exercised its inherent authority to enforce its own directives to "accord complete equity" given Bunting's behavior and demonstrated hostility toward Kozlowski. *Walworth, supra* at 564. The trial court's exercise of its equitable powers did not contravene this Court's directive in *Bunting*, which did not address whether liens could be imposed based on the equitable considerations described above. We hold, on the particular facts before us, that the law of the case doctrine does not preclude the trial court's provision of liens on properties owned by Bunting because the trial court applied equitable principles in awarding Kozlowski liens given Bunting's demonstrated noncompliance with the trial court's orders.

Bunting also argues that the trial court improperly authorized a lien on his life insurance policy contrary to MCL 500.2207(2). We disagree.

MCL 500.2207(2) provides, in relevant part:

> If a policy of insurance . . . is effected by any person . . . or . . . if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof (other than the insured or the person so effecting such insurance, or his executors or administrators) shall be entitled to the proceeds and avails (including the cash value thereof) against the creditors and representatives of the insured and of the person effecting the same, (whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable in the event that the beneficiary or assignee shall predecease such person, to the person whose life is insured or the person effecting the insurance) . . . .

Under the statute's plain terms, Bunting's argument fails. The statute unambiguously provides that *the lawful beneficiary or assignee* shall be entitled to the proceeds of a properly assigned insurance policy or insurance policy made payable to another. Because the record demonstrates that Bunting agreed to equally divide the proceeds of all insurance policies, the trial court did not err in providing the lien under its equitable powers. *Walworth, supra* at 564.

B.

Bunting next argues that the trial court erred by including in its order provisions stating that Kozlowski may perfect her liens by filing copies of the judgment and the order with the registers of deeds in the counties where the real properties are located and with the escrow agents of the life insurance policies. We disagree.

Bunting cites article 9 of the Uniform Commercial Code (UCC), 440.9901 *et seq*., arguing that absent an agreement to provide a lien, a security interest cannot attach. However, the trial court had equitable jurisdiction to impose liens (a form of security interests). *Walworth, supra* at 564. Further, MCL 522.104 expressly provides that "[a] certified copy of any decree granted in a suit for divorce may be recorded in the office of the register of deeds of any county in this State." See also *Coates v Coates*, 327 Mich 444, 448; 42 NW2d 138 (1950).

C.

Bunting next argues that the trial court erred by not entering an order unencumbering his property. Because we hold that the trial court correctly modified the consent judgment to conform to *Bunting*, including exercising its equitable powers to impose liens, this issue is moot. *Ewing v Bolden*, 194 Mich App 95, 104; 486 NW2d 96 (1992).

D.

Bunting next argues that the trial court erred by: not reopening and adjusting the reconciliation "equalizer" determined by the Special Master (Caterina Fox) to account for *Bunting*; failing to reverse its previous opinion; and failing to reverse its previous awards of attorney fees to Kozlowski. This issue is unpreserved. For unpreserved issues, this Court reviews for plain error affecting substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004). This Court reviews a trial court's decision to award attorney fees for an abuse of discretion. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 234 (2003).

Bunting contends that the award of attorney fees to Kozlowski based on Fox's report in the March 27, 2002, and October 7, 2002, trial court orders should be reversed, and that he should be awarded costs and fees "for the appeals . . . and a credit for all those fees against him for implementation of the divorce judgment as well as all subsequent orders requiring him to pay attorney fees for non-compliance with provisions in a judgment that have now been stricken." We disagree.

Bunting did not challenge the attorney fees award in *Bunting*. Accordingly, Bunting "waived this issue when the case was last before this Court; it is therefore beyond the scope of the present remand order." *Arco Industries Corp v American Motorists Ins Co*, 232 Mich App

146, 168; 594 NW2d 61 (1998). Moreover, Bunting gives no more than cursory treatment to his assertion on appeal that attorney fees would be warranted based on this Court's holdings in *Bunting*, and accordingly, we also consider this claim abandoned.[1] An appellant may not simply announce a position and leave it to this Court to discover and rationalize that position, nor may he give cursory treatment with little or no citation of supporting authority. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

E.

Bunting next argues that the trial court erred by ordering that the division of rents on the Cape Coral and Columbia Street properties as recommended by Fox would remain undisturbed. Because Bunting did not raise this issue on remand, it is unpreserved. For unpreserved issues, this Court reviews for plain error affecting substantial rights. *Veltman, supra* at 690.

When the parties put their settlement agreement on the record, they agreed to submit the question of the division of the amount of rents due the parties from the two properties to Fox for a reconciliation. The consent judgment of divorce provides:

> IT IS FURTHER ORDERED AND ADJUDGED that in addition to rents specified in other sections of this Consent Judgment, both parties shall be responsible to pay to the marital estate all rents . . . they received or that became due but were not otherwise deposited by the parties to the parties Michigan LLC account or KeyBank joint account(s) as verified by the Special Master. This obligation shall include all . . . rents received on the Cape Coral and Columbia properties from the date of filing the Complaint until sale or final distribution of the property . . . . The Special Master shall include these obligations in her reconciliation of funds prepared for the Court.

Post-judgment evidentiary hearings were conducted on June 12, 2002, August 14, 2002, and November 6, 2002, after which, the trial court adopted Fox's reconciliation report wherein she

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[1] The Order Conforming the Consent Judgment of Divorce to Court of Appeals Opinion did not add or modify the attorney fee provisions in the March 14, 2002 consent judgment. The attorney fee provisions in the March 14, 2002 consent judgment provide:

> IT IS FURTHER ORDERED AND ADJUDGED that other than the award of fees to Plaintiff pursuant to the prior Order of the Court and this Consent Judgment, each party is solely responsible for payment of their attorney fees and costs.
>
> IT IS FURTHER ORDERED AND ADJUDGED that non-compliance or non-cooperation by either party in facilitating the terms and provisions of this Consent Judgment will result in an award of reasonable attorney fees and costs against the non-complying party.

(1) divided equally the rents from the Cape Coral and Columbia properties between the parties, and (2) determined Bunting owed Kozlowski an equalizer of $401,974.68.

Bunting held:

> The consent judgment improperly included in the marital estate rents from the Cape Coral and Columbia properties. Although it is clear from previous orders and the agreement on record that the rents were to be deposited in the escrow account and included in the property settlement agreement in some fashion, *it is not clear whether they were marital property or defendant's solely owned property*. The parties did not agree on the record that the rents were part of the marital estate, only that they were to be considered in the reconciliation provided by the special master. Therefore, to the extent that the consent judgment provided that the rents were marital property, the judgment impermissibly unilaterally added a provision. [Emphasis added.]

Bunting now asserts, in reliance on the above italicized clause, that an evidentiary hearing is now required to determine whether the Cape Coral and Columbia properties should be considered as marital property or his solely owed property. We disagree.

As a threshold matter, Bunting provides no legal authority or factual basis to support his argument, nor any citation to the record demonstrating that he ever requested an evidentiary hearing on this issue. Thus, we deem this issue abandoned. *Houghton, supra* at 339-340. In any event, Bunting's claim lacks merit.

The trial court's Order Conforming Consent Judgment of Divorce to Court of Appeals Opinion is consistent with *Bunting*. Specifically, the trial court's January 21, 2005, order provides:

> IT IS FURTHER ORDERED AND ADJUDGED that the provision of the March 14, 2002, Consent Judgment of Divorce which included the Cape Coral and Columbia rents within the marital estate are hereby vacated; nevertheless, however, the division of the rents as determined by Caterina Fox and ordered by this Court shall remain undisturbed.

Because *Bunting* merely held that the trial court erred in unilaterally adding a provision treating the rents as marital property, and did not express an opinion on the actual division of the rents, the trial court's modification of the consent judgment, striking the rent provision, is consistent with *Bunting*. Notably, at the time of the first appeal, Fox had already divided the rents between the parties and the trial court had already adopted her reconciliation. Yet there is no evidence in the record that Bunting challenged as unequal the actual division of the rents between the parties in *Bunting*, or in the three-day post-judgment evidentiary hearings conducted on June 12, 2002, August 14, 2002, and November 6, 2002. Accordingly, Bunting "waived this issue when the case was last before this Court; it is therefore beyond the scope of the present remand order." *Arco Industries Corp, supra* at 168.

F.

Bunting next argues that the trial court erred in ordering that "because the vehicles have already been allocated and other personal property has been divided between the parties pursuant to agreement or subsequent orders of this court, there shall be no adjustment of the equalizer to reflect this modification." Bunting fails to cite any legal authority in support of his argument. Therefore, we deed this argument abandoned. *Houghton*, *supra* at 339-340.

IV.

Under the facts of this case, the trial court did not violate the law of the case doctrine when it allowed Kozlowski to have a lien on Bunting's property, because the trial court was exercising its equitable powers to impose the lien. The trial court did not err in ordering that copies of the judgment and order be filed with registers of deeds and escrow agents of life insurance policies. The trial court did not err by including in its order a provision that the division of rents on the Cape Coral and Columbia properties as determined by the special master. Finally, the trial court did not err by including in its order the provision stating that "because the vehicles have already been allocated and other personal property has been divided between the parties pursuant to agreement or subsequent orders of this court, there shall be no adjustment of the equalizer to reflect this modification."

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder